

JUDICIAL COUNCIL OF THE  
SECOND CIRCUIT

X



In re  
COMPLAINT OF JUDICIAL MISCONDUCT

Docket Nos. 18-90204-jm  
18-90205-jm  
18-90206-jm  
18-90210-jm

X

Before: The Judicial Council of the Second Circuit.



In October 2018, four complaints of judicial misconduct were filed against a then inactive senior circuit judge of another circuit, pursuant to the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351–364 (the “Act”), and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (effective March 12, 2019) (the “Rules”), *available at* [https://www.uscourts.gov/sites/default/files/judicial\\_conduct\\_and\\_disability\\_rules\\_effective\\_march\\_12\\_2019\\_0.pdf](https://www.uscourts.gov/sites/default/files/judicial_conduct_and_disability_rules_effective_march_12_2019_0.pdf). The complaints allege, on the basis of a news article, that the then-inactive senior circuit judge may have committed misconduct relating to tax and financial transactions, mostly in the 1980s and 1990s. On November 29, 2018, in response to a request from the chief circuit judge of the home circuit, the Chief Justice

transferred the complaints, and any pending or new complaints relating to the same subject matter, to the Second Circuit Judicial Council. *See Rule 26.*

The judge named in the complaint had been an inactive senior judge who did not hear any cases or have chambers or chambers staff, and has since relinquished the office of United States senior judge by retiring, that is, resigning, pursuant to 28 U.S.C. § 371(a).

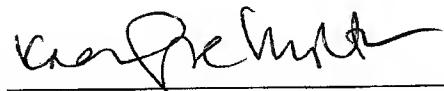
The Act is concerned with individuals who *currently* exercise the powers of the office of federal judge. Its emphasis is on correction of conditions that interfere with the effective and expeditious administration of the business of the courts. The Act defines "judge" as "a circuit judge, district judge, bankruptcy judge, or magistrate judge." 28 U.S.C. § 351(d)(1). Because the now former judge fully resigned the office of United States circuit judge, and can no longer perform any judicial duties, the former judge does not fall within the scope of persons who can be investigated under the Act.

Accordingly, the Judicial Council must "conclude the proceeding because [of] . . . intervening events . . ." Rule 20(b)(1)(B); *see also* Rule 11 cmt. (identifying "resignation from judicial office" as such an intervening event); *In re Complaint of Judicial Misconduct*, 10 F.3d 99, 99–100 (3d Cir. Jud. Council 1993) ("Inasmuch as a

judge who retired under 28 U.S.C. § 371(a) by giving up his or her judicial office is no longer exercising judicial duties, he or she can no longer prejudice the 'effective and expeditious administration of the business of the courts.'"); *In re Charge of Judicial Misconduct*, No. 17-90013, at \*1 (2d Cir. Jud. Council March 7, 2017) ("Because the subject judge resigned from office . . . 'action on the complaint is no longer necessary because of intervening events.''" (quoting 28 U.S.C. § 352(b)(2))); *In re charge of Judicial Misconduct*, No. 13-90089, at \*1 (2d Cir. Jud. Council April 15, 2014) (same); *In re Charge of Judicial Misconduct*, 91 F.3d 90, 91 (9th Cir. Jud. Council 1996) ("Because he is no longer a judicial officer, he is no longer subject to the judicial disciplinary procedures . . . . The district judge's voluntary retirement under Section 371(a) is sufficient to render the charges and related issues moot."); *In re Charge of Judicial Misconduct*, 782 F.2d 181, 181 (9th Cir. Jud. Council 1986) ("When the subject of the complaint is no longer a judicial officer, he is beyond the reach of these procedures and the remedies they prescribe.").

In concluding these proceedings, the Judicial Council does not reach the merits of the complaints.

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED,  
ADJUDGED AND DECREED that the above-referenced complaint proceedings  
are CONCLUDED.



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Karen Greve Milton, Circuit Executive  
and Secretary to the Judicial Council

Signed: April 1, 2019  
New York, New York